

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 S. MICHAEL COHEN, an individual,
11 Plaintiff,
12 vs.
13 ROSA MORENO, and Does 1 through
14 10, inclusive,
Defendants.

CASE NO. 14cv30-WQH-BLM
ORDER

HAYES, Judge:

15 The matters before the Court are the Motion for Leave to Proceed in Forma
16 Pauperis (“Motion to Proceed IFP”) and Motion to File Electronically, both filed by
17 Plaintiff S. Michael Cohen. (ECF Nos. 2, 4).

18 On January 6, 2014, Plaintiff, proceeding pro se, initiated this action by filing the
19 Complaint (ECF No. 1), the Motion to Proceed IFP (ECF No. 2), and the Motion to File
20 Electronically (ECF No. 4). The Complaint alleges claims for fraud, extreme emotional
21 distress, malicious prosecution and declaratory relief. The Complaint alleges diversity
22 subject-matter jurisdiction.

23 *MOTION TO PROCEED IFP*

24 All parties instituting a civil action, suit, or proceeding in a district court of the
25 United States, other than a petition for writ of habeas corpus, must pay a filing fee of
26 \$400.00. *See* 28 U.S.C. § 1914(a); S.D. Cal. Civ. L.R. 4.5. An action may proceed
27 despite a party’s failure to pay only if the party is granted leave to proceed in forma
28 pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177

1 (9th Cir. 1999). “To proceed in forma pauperis is a privilege not a right.” *Smart v.*
 2 *Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

3 In an affidavit, Plaintiff states that he is unemployed, has no income or bank
 4 accounts, and owns no assets of value. Plaintiff states that his daughter supports him
 5 financially and he has “substantial debts.” (ECF No. 2 at 3). Pursuant to 28 U.S.C. §
 6 1915(a) and Local Civil Rule 3.2, the Motion to Proceed IFP is granted.

7 *INITIAL SCREENING OF COMPLAINT*

8 A complaint filed by any person proceeding in forma pauperis pursuant to 28
 9 U.S.C. § 1915(a) is subject to mandatory review and sua sponte dismissal to the extent
 10 it “is frivolous or malicious; fails to state a claim on which relief may be granted; or
 11 seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. §
 12 1915(e)(2)(B)(i)-(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en
 13 banc). Upon review of the allegations in the Complaint, the Court finds they are
 14 sufficient to satisfy the requirements of section 1915(e)(2)(B). *See Teahan v. Wilhelm*,
 15 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007) (“[T]he sua sponte screening and dismissal
 16 procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6)
 17 motion that the defendant may choose to bring.”).

18 *MOTION TO FILE ELECTRONICALLY*


19 Pursuant to the Electronic Case Filing Administrative Policies and Procedures
 20 Manual of the United States District Court for the Southern District of California (“ECF
 21 Manual”), pro se litigants are required to submit and file all documents in paper form
 22 unless the Court grants the litigant leave to electronically file. *See* ECF Manual § 2(b).
 23 Plaintiff states that he has a registered PACER account and has filed documents through
 24 CM/ECF in the Northern District of California for six years. Plaintiff states that he is
 25 a Mexican citizen, and “electronic filing would save time crossing the border and
 26 reduce cost to Plaintiff.” (ECF No. 4 at 1). The Motion to File Electronically is
 27 granted. Plaintiff is required to follow all rules and policies in the ECF Manual,
 28 available via the Court’s website.

1 *CONCLUSION*

2 IT IS HEREBY ORDERED that the Motion to Proceed IFP (ECF No. 2) is
3 GRANTED. The Clerk of the Court shall issue a summons and provide Plaintiff with
4 the summons, certified copies of this Order and the Complaint, and a blank U.S.
5 Marshal Form 285. Plaintiff shall complete the U.S. Marshal Form 285, and forward
6 the Form 285 and the designated copies of this Order and the Complaint to the U.S.
7 Marshal. The U.S. Marshal shall serve a copy of the Complaint and summons upon
8 Defendant as directed by Plaintiff on the U.S. Marshal Form 285.

9 IT IS FURTHER ORDERED that the Motion to File Electronically is
10 GRANTED. (ECF No. 4). Plaintiff is required to follow all rules and policies in the
11 ECF Manual, available via the Court's website. As stated in the ECF Manual, Plaintiff
12 "must register as a user with the Clerk's Office and as a subscriber to PACER within
13 five (5) days." ECF Manual § 2(b).

14 DATED: January 13, 2014

15 
16 **WILLIAM Q. HAYES**
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28